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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE: THE TERMINATION OF THE PARENT)
CHILD RELATIONSHIP OF K.G., B.R., N.R.,)
AND A.R., (Minor Children) and,)

ANGEL RAINBOLT, (Mother),)
Appellant-Respondent,)

vs.)

HARRISON COUNTY DEPARTMENT)
OF CHILD SERVICES,)

Appellee-Petitioner.)

No. 31A05-0608-JV-417

APPEAL FROM THE HARRISON CIRCUIT COURT

The Honorable H. Lloyd Whitis, Judge

Cause No. 31C01-0405-JT-3

31C01-0405-JT-4

31C01-0405-JT-5

31C01-0405-JT-6

September 28, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Angel Rainbolt appeals the termination of her parental rights to four of her children. We reverse.

Issue

Rainbolt raises one issue, which we restate as whether there was sufficient evidence to support the termination of her parental rights.

Facts

On November 20, 2002, Rainbolt was driving five¹ of her children, including A.R., B.R., N.R., and K.G., while she consumed alcohol. She was stopped by the police and arrested for and charged with Class D felony driving while intoxicated. That same day, the children were placed in foster homes. K.G. was placed in one foster home, and A.R., B.R., and N.R., were placed in another.

On December 16, 2002, the Harrison County Department of Child Services (“DCS”) filed an amended petition alleging that the children were children in need of services (“CHINS”). In February 2004, Rainbolt was charged with Class D felony assisting a criminal after a man wanted by the police was found in her house. On May 3,

¹ Rainbolt’s son, C.R., was also in the car, but he has since been placed in his father’s custody and is not involved in the termination proceeding.

2004, the DCS filed a petition for the involuntary termination of Rainbolt's parental rights.

On October 15, 2004, Rainbolt was again charged with Class D felony driving while intoxicated. She remained incarcerated until December 2, 2004, at which point she was released to Turning Point, a detoxification and residential treatment facility. She remained at Turning Point until January 3, 2005. Rainbolt was then placed in Bliss House to continue her recovery. On July 8, 2005, Rainbolt graduated from Bliss House and moved in with her bother, Jerry Wiseman, and his wife in their five-bedroom home.

Since her October 2004 arrest, Rainbolt has remained sober and has continued to participate in substance abuse treatment programs, including Alcoholics Anonymous. Rainbolt began working at the nursing home in September 2004, and is now employed full-time as a dietary aid.

On September 30, 2005, the trial court held a hearing on the DCS's petition to terminate Rainbolt's parental rights. The hearing was continued until December 2, 2005, after which the trial court granted the DCS's petition to terminate Rainbolt's parental rights.² The trial court concluded, "the conditions that resulted in the child's removal or the reasons for the placement outside the parent's home will not be remedied" App. p. 16. The trial court also concluded:

the continuation of the parent-child relationship poses a threat
to the well-being of the child in that:

² The trial court entered separate orders for each child. However, they are all substantially similar to this order that specifically terminated Rainbolt's parental rights relating to K.G.

- A. The mother's criminal history and recidivism;
- B. The mother's substance abuse;
- C. The mother's neglect and failure to provide a stable, suitable home for the child and the adequate supervision of the child, and
- D. The mother's general instability and lack of addressing personal and parental issues with the assistance provided.

Id. Rainbolt now appeals.

Analysis³

Rainbolt argues that there is insufficient evidence to support the termination of her parental rights.

The Fourteenth Amendment to the United States Constitution protects the traditional right of parents to establish a home and raise their children. A parent's interest in the care, custody, and control of his or her children is "perhaps the oldest of the fundamental liberty interests." Indeed the parent-child relationship is "one of the most valued relationships in our culture." We recognize of course that parental interests are not absolute and must be subordinated to the child's interests in determining the proper disposition of a petition to terminate parental rights. Thus, "[p]arental rights may be terminated

³ In her Statement of the Case, Rainbolt points out that although the Guardian Ad Litem was present at the hearings, she did not testify. She also notes that although the Guardian Ad Litem's reports were filed with the trial court, they were not admitted into evidence. Rainbolt does not develop this issue in the argument section of her brief. Nevertheless, at both hearings the trial court referenced the Guardian Ad Litem's reports. Further, at the conclusion of the December 2005 hearing, Rainbolt indicated that she would not call the Guardian Ad Litem as a witness and moved to strike a portion of both reports as being conclusory. Rainbolt did not object to the trial court's reliance on the reports. "A timely objection is a prerequisite to appellate review. An appellant cannot sit idly by without objecting, await the outcome of trial, and thereafter raise an issue for the first time on appeal." Sebastian v. Sebastian, 798 N.E.2d 224, 228 (Ind. Ct. App. 2003) (quotation and citation omitted). Any argument regarding the admission of the Guardian Ad Litem's reports is waived.

when the parents are unable or unwilling to meet their parental responsibilities.”

Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005)

(alteration in original) (citations omitted).

“When reviewing the termination of parental rights, we do not reweigh the evidence or judge witness credibility.” Id. “We consider only the evidence and reasonable inferences that are most favorable to the judgment.” Id. Where a trial court enters findings and conclusions granting a petition to terminate parental rights, we apply a two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then we determine whether the findings support the judgment. Id. We will set aside a judgment that is clearly erroneous. Id. A judgment is clearly erroneous when the findings do not support the trial court’s conclusions or the conclusions do not support the judgment. Id.

A petition to terminate the parent-child relationship must allege:

(A) one (1) of the following exists:

(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

(ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court’s finding, the date of the finding, and the manner in which the finding was made; or

(iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2).

The DCS had the burden of proving these allegations by clear and convincing evidence. See Bester, 839 N.E.2d at 148. Clear and convincing evidence need not show that the continued custody by the parent is wholly inadequate for the child's very survival. Id. Instead, it is sufficient to show by clear and convincing evidence that the child's emotional and physical development is threatened by the parent's custody. Id.

Rainbolt first argues that there is not clear and convincing evidence that the conditions resulting in the children's removal will not be remedied. In determining whether the conditions will be remedied, the trial court first should determine what conditions led the State to place the child outside the home, and second whether there is a reasonable probability that those conditions will be remedied. In re C.C., 788 N.E.2d 847, 854 (Ind. Ct. App. 2003), trans. denied. "When assessing a parent's fitness to care for a child, the trial court should view the parent as of the time of the termination hearing and take into account any evidence of changed conditions." Id. "However, the trial court

should also take into account the parent's habitual patterns of conduct as a means of determining the probability of future detrimental behavior, as well as the services offered by [DCS] to the parent and the parent's response to those services." In re K.S., 750 N.E.2d 832, 837 (Ind. Ct. App. 2001).

The amended CHINS petition refers to Rainbolt's November 2002 drunk driving arrest, the pending foreclosure of her home, and her suspended driver's license as the reasons for the DCS's intervention. At the December 2005 hearing Rainbolt testified that she had been sober for fourteen months. Dr. Mary Lee Bouldin, the psychiatrist overseeing Rainbolt's case, testified that Rainbolt was doing "extremely well" in her recovery, that with continued treatment she will continue to improve, that she had made a 180 degree turnaround, and that Rainbolt was taking a drug for addiction that was not on the market in 2002. Sept. Hr. Tr. p. 133. Dr. Bouldin testified that Rainbolt has an "extremely good" prognosis for maintaining her sobriety. Id. at 138. Wayne Buchinsky, Rainbolt's therapist, testified that although Rainbolt had not been ready for treatment in the past, her progress was "remarkable" and that she was a "model patient." Id. at 147. Buchinsky testified that Rainbolt's success continued as she transitioned from the highly structured Turning Point to her brother's home. Sue LaRue, the director of Bliss House, testified that Rainbolt made more progress than expected and that Rainbolt even set up a program of Alcoholics Anonymous meetings at the nursing home where she works.

Rainbolt's case manager, Caren Geckler, testified that although Rainbolt had done "very well" over the past few months, her progress was "too little too late." Id. at 75, 48. Certainly, Rainbolt would have better served her children by becoming sober before

October 2004. However, at the time of the December hearing, Rainbolt had been sober for the previous fourteen months and her prognosis for maintaining her sobriety was good. Although Rainbolt's sobriety came almost two years after the incident resulting in the CHINS proceeding, we cannot categorize Rainbolt's fourteen-month sobriety and positive prognoses as being too little, too late.

The DCS's assertion on appeal that Rainbolt has been sober and relapsed is not in and of itself clear and convincing evidence that the conditions resulting in the children's removal will not be remedied. Rainbolt testified that in the past she had stayed sober because she was pregnant. There is no indication that Rainbolt was currently maintaining her sobriety because she was pregnant. Further, at the time of the hearing she was taking a medication to help control her alcohol cravings, and this drug was not available before 2002. Finally, Rainbolt successfully completed intensive alcohol treatment and is fully participating in Alcoholics Anonymous. Despite past relapses, it appears that Rainbolt is committed to remaining sober and has taken many steps to achieve that goal.

Regarding suitable housing, Rainbolt lives with Wiseman and his wife in a home that the Guardian Ad Litem, Carrie Stiller, described as appearing "to have sufficient room for Mr. Wiseman, his wife, and [Rainbolt] and her children." App. p. 120. Stiller further described "a serious cat-feces odor in the basement that was hardly bearable. The upstairs, though, was clean." Id. Stiller concluded, "the pet feces may or may not be able to be remedied in the basement where the children would stay." Id. at 122. Stiller was also concerned about the 1997 allegations of molestation against Wiseman made by his then-fifteen-year-old daughter. Although Wiseman maintained his innocence, "[h]e

served about five and half months in jail for two misdemeanors of simple assault against his daughter.” Id. at 120.

Although Stiller’s description of Rainbolt’s housing situation is not ideal, it appears that Rainbolt has secured housing that would provide adequate room for her four children. Also, Stiller acknowledged that Wiseman is agreeable to the children living there. Geckler testified that she had not been to Wiseman’s residence and did not know if it was appropriate for children. Geckler further testified that from speaking with Rainbolt, Wiseman’s house “sounds like it’s a nice home. . . .” Sept. Hr. Tr. p. 73. Moreover, Rainbolt testified that if DCS found her a place where she could live with the children, she would move there.

Although Rainbolt’s housing situation is not ideal, there is no requirement that parents provide perfect or even the “best possible” housing before they may be reunited with their children. The evidence indicates that Wiseman’s house is adequate. Further, Rainbolt is willing to find alternative housing with the assistance of the DCS. We are convinced that Rainbolt can provide suitable housing for the children.

Finally, Rainbolt’s driver’s license is suspended until 2015. However, this is not a condition that Rainbolt alone can remedy. Further, despite the suspension of her driver’s license, Rainbolt has maintained fulltime employment. Rainbolt testified that if she were reunited with her children she would figure out a way to live close to her work and the children’s school so that they could walk. When questioned about how she would get the children to doctor’s appointments, Rainbolt responded that her adult son, son’s girlfriend, adult daughter, mother, or mother’s husband could help with her transportation needs.

We cannot conclude that the suspension of Rainbolt's driver's license is a sufficient basis for terminating her parental rights. Rainbolt's lack of driver's license could prove difficult at times; however, it seems that Rainbolt is aware of the potential complications and is willing to minimize them and seek assistance from her family.

At the time of the hearing, Rainbolt had been sober for fourteen months and her prognosis for her continued sobriety was good, she was residing at her brother's home for five months and he was willing to allow the children to stay there as well, and Rainbolt had managed to maintain her job, continue her recovery efforts, and participate in visitation with the children despite not having a driver's license. The DCS did not establish with clear and convincing evidence that there is a reasonable probability that the conditions resulting in the children's placement outside the home will not be remedied.

Rainbolt also argues that there is not clear and convincing evidence that the continuation of the parent-child relationship poses a threat to the well-being of the children. The trial court considered Rainbolt's criminal history, substance abuse, neglect, failure to provide a suitable home, inadequate supervision, and instability as reasons why the continuation of the parent-child relationship poses a threat to the children's well-being.

In her report, Stiller described Rainbolt's criminal history as:

Her driver's license was suspended in 1986 due to "failure to comply to," indefinitely. Her record showed no convictions in the ten years prior to 1986. Her license was suspended again from March 6, 1991 through August 6, 1998 for failure to comply for DDC, chemical test failure, and operating while intoxicated. On November 16, 1992 she was noted to be convicted of driving while suspended. She had another

chemical test failure on October 18, 1999 at which time her license was suspended until March 6, 2000. She was convicted of operating while intoxicated on February 23, 2000 at which time her suspension was extended to May 9, 2000. Her license was suspended on March 6, 2000 when she received a ticket for not having insurance. On December 16, 2002, her record shows that she had an [operating while intoxicated] and prior [operating while intoxicated] within five years, resulting in the suspension of her license. She had been convicted for “prior [operating while intoxicated] within five years” (as well as for no insurance) as a result of the incident on November 16, 2002 (which caused the removal of the children). On January 26, 2005, she was convicted of operating while intoxicated and her license was again suspended. Due to her being an “habitual traffic violator”, she was given a ten year suspension.

App. pp. 150-51.

In addition to these alcohol-related offenses, on January 27, 2004, Rainbolt was arrested for assisting a criminal. She pled guilty to this offense. Rainbolt also reported to her probation officer that she had a “marijuana charge in 1990” Sept. Hr. Tr. p. 16. In 2001 and 2003, petitions to revoke her probation were filed. The first was filed because Rainbolt had not paid certain fees and had not obtained her GED. Rainbolt performed community service in lieu of the fees and got her GED. The second petition was based on a positive drug screen for marijuana and her failure to pay fees, and Rainbolt was required to attend Alcoholics Anonymous meetings and complete an intensive outpatient program to address her drug and alcohol issues. As of the September 30, 2005 hearing, Rainbolt had a year and a half of probation to serve.

As Stiller noted in her supplemental report, however, after the October 2004 offense of operating while intoxicated, Rainbolt had no “new violations or convictions.”

App. p. 20. At the termination hearing, one of Rainbolt's probation officers, Marian Harrison, testified that since December 2004, "she has just really done very, very well" Sept. Hr. Tr. p. 19. Referring to Rainbolt's involvement in the legal system, Harrison testified, "I would say that Ms. Rainbolt is a fine young woman who would not be in this position if it wasn't for her problem with alcohol." Id. at 23. Another probation officer wrote a letter stating:

It is my opinion that Angel has taken positive steps towards dealing with her alcohol problem. Angel in the past did not recognize or acknowledge she had a problem with alcohol. She has completed a very intensive program at Bliss House and continues to attend Alcoholics Anonymous meetings.

I am very proud of her accomplishments thus far.

Exhibit C.

In sum, Rainbolt's criminal history includes a conviction for a marijuana-related offense, assisting a criminal, and numerous alcohol related offenses. With the exception of the assisting a criminal offense, Rainbolt's criminal history is tied closely to her substance abuse. Rainbolt has made significant and continuing progress in addressing her alcohol abuse and her prognosis for continued success is good. This taken with the fact that she has not reoffended or violated the terms of her probation since the October 2004 offense leads us to conclude that, at this point, Rainbolt's criminal history does not pose a threat to the children's well-being.

Regarding substance abuse, as we have discussed, at the time of the hearing, Rainbolt had been sober for fourteen months. She is fully participating in recovery programs and even started Alcoholics Anonymous meetings at the nursing home where

she works. Although Rainbolt has relapsed in the past, the evidence indicates that this is the first time that she has acknowledged the extent of alcohol abuse and has been fully committed to maintaining sobriety. Given this evidence, we cannot conclude that there is clear and convincing evidence that Rainbolt's substance abuse poses a threat to the children's well-being.

Regarding the finding of neglect and inadequate supervision, the State directs us to no evidence supporting this finding. In fact, at the time of the December 2005 hearing, Rainbolt was participating in weekend long visitation with A.R., B.R., and N.R., supervised by Rainbolt's mother. Although this visitation did not occur every weekend as permitted, Rainbolt explained that she was not aware that she was permitted visitation every weekend and that, even after she became aware, her work schedule prohibited her from exercising such frequent visitation. In terms of her visitation with K.G., Rainbolt testified that her visitation was not as frequent with him in part because it was difficult to coordinate with his foster parents.

Angela Caine, a case manager who monitored and supervised visitations between Angel and the children from February 2003 until July 2003, testified during the visits she supervised Rainbolt was "appropriate with the kids." Sept. Hr. Tr. p. 93. She further testified:

during most of the visits she was appropriate with the kids, her interactions were appropriate. There were several times that she did not always follow through with . . . the younger two children. And a few times the supervision might have been lack, as far as the children would go outside on several occasions and she would be in the home, but there were in the yard area so she wouldn't be outside with them, but those

were just a few times those things occurred. Otherwise it was appropriate.

Id. at 93-94.

Based on their individual interactions with Rainbolt, Dr. Bouldin and Buchinsky both testified that as long as Rainbolt maintains her sobriety, there is no reason to believe that she would endanger the children, that nothing specifically relating to Rainbolt would significantly impair the children's development, and that there were no issues to prohibit Rainbolt from acting as a mother. There simply is not clear and convincing evidence that Rainbolt will continue to neglect or inadequately supervise the children so as to threaten their well-being.

With regard to the finding that Rainbolt failed to provide a suitable home, we recognize that the allegations of molestation against Wiseman and resulting misdemeanor assault convictions are troublesome. However, the offenses were committed almost ten years ago and there is no indication that Wiseman has reoffended. Further, Wiseman and his wife are willing and able to provide a home for Rainbolt and her children. Moreover, Rainbolt testified that she was willing to move into her own residence with the children. She testified that she had not sought her own apartment because she was paying rent to Wiseman. There is not clear and convincing evidence that Rainbolt has failed to provide a suitable home to the extent that it poses a threat to the children's well-being.

In terms of the finding of instability, at the time of the December 2005 hearing, Rainbolt had been sober for fourteen months and her prognosis of continued sobriety was good. She had also maintained her job at the nursing home since September 2004.

Rainbolt works days several days a week and every other weekend. Despite not having a driver's license, Rainbolt has been able to maintain her employment. Since being released from the Bliss House in July 2005, Rainbolt has resided with Wiseman. There is not clear and convincing evidence that Rainbolt is instable so as to threaten the children's well-being.

The caseworker characterized the substantial and significant changes that Rainbolt has made as being "too little too late." September Tr. p. 48. However, given the highly valued nature of the parent-child relationship, we believe that, under these circumstances, Rainbolt's significant lifestyle changes are better late than never. Although we are extremely cautious to reverse the trial court's granting of a termination petition, here, where Rainbolt has made such significant improvements in her circumstances as evidenced by the testimony of her probation officer, her therapists, and to some extent even her case manager, we believe that there is insufficient evidence to warrant the termination of Rainbolt's parental rights.

Conclusion

There is insufficient evidence to support the termination of Rainbolt's parental rights. We reverse.

Reversed.

SULLIVAN, J., and ROBB, J., concur.